

## HOUSE BILL NO. 376

INTRODUCED BY J. TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A COURT ON A FIRST OR SECOND CONVICTION OF AN ALCOHOL-RELATED OR DRUG-RELATED TRAFFIC OFFENSE TO SENTENCE THE OFFENDER TO PERIODIC TESTING FOR ALCOHOL OR DRUGS AS AN ALTERNATIVE TO ANY OTHER SENTENCE; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-8-714, MCA, is amended to read:

**"61-8-714. Penalty for driving under influence of alcohol or drugs -- alcohol or drug testing as alternative sentence -- first through third offense.** (1) Except as provided in subsection (4) and subject to the provisions of subsection (5), a person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48 consecutive hours or more than 12 months and by a fine of not less than \$600 or more than \$2,000. The initial 24 hours of the imprisonment term must be served and may not be served under home arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the person's physical or mental well-being. Except for the initial 24 hours of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the person.

(2) Except as provided in subsection (4) and subject to the provisions of subsection (5), on a second conviction, the person shall be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6 months, except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less than 14 days or more than 12 months. At least 48 hours of the imprisonment term must be served and served consecutively and may not be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may not be suspended. Except for the

1 initial 5 days of the imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be  
2 suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment  
3 program by the person.

4 (3) Except as provided in subsection (4), on the third conviction, the person shall be punished by  
5 imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or  
6 more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time  
7 of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than  
8 12 months and by a fine of not less than \$2,000 or more than \$10,000. At least 48 hours of the imprisonment term  
9 must be served and served consecutively and may not be served under home arrest. The imposition or execution  
10 of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment  
11 sentence may be suspended for a period of up to 1 year pending successful completion of a chemical  
12 dependency treatment program by the person.

13 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
14 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive  
15 alcohol concentration.

16 (5) As an alternative to any sentence imposed under subsection (1) or (2), a court may order the  
17 convicted person to submit to tests for the presence of alcohol or drugs in the person's body during the duration  
18 of the alternative sentence. The tests must be administered by a law enforcement officer employed by the agency  
19 that made the arrest for the offense for which the person is sentenced. The tests must be administered on a  
20 schedule established by the court. The court may alter the testing schedule as is, in the discretion of the court,  
21 considered appropriate based on the test results. The law enforcement agency shall, as soon as reasonably  
22 possible, report all test results to the sentencing court. The person shall pay for the testing unless the court  
23 determines the person is unable to pay."

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25 **Section 2.** Section 61-8-722, MCA, is amended to read:

26 **"61-8-722. Penalty for driving with excessive alcohol concentration -- alcohol or drug testing as**  
27 **alternative sentence -- first through third offense.** (1) Except as provided in subsection (4) and subject to the  
28 provisions of subsection (5), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for  
29 not more than 10 days and by a fine of not less than \$300 or more than \$1,000, except that if one or more  
30 passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished

1 by imprisonment for not more than 20 days and by a fine of not less than \$600 or more than \$2,000.

2 (2) Except as provided in subsection (4) and subject to the provisions of subsection (5), on a second  
3 conviction of a violation of 61-8-406, the person shall be punished by imprisonment for not less than 5 days, to  
4 be served in the county jail and not on home arrest, or more than 30 days and by a fine of not less than \$600 or  
5 more than \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time  
6 of the offense, the person shall be punished by imprisonment for not less than 10 days, which may not be served  
7 on home arrest, or more than 60 days and by a fine of not less than \$1,200 or more than \$2,000. The imposition  
8 or execution of the first 5 days of the imprisonment sentence may not be suspended.

9 (3) Except as provided in subsection (4), on a third conviction of a violation of 61-8-406, the person shall  
10 be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home arrest,  
11 or more than 6 months and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more  
12 passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished  
13 by imprisonment for not less than 20 days, which may not be served on home arrest, or more than 12 months  
14 and by a fine of not less than \$2,000 or more than \$10,000. The imposition or execution of the first 10 days of  
15 the imprisonment sentence may not be suspended.

16 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in  
17 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive  
18 alcohol concentration.

19 (5) As an alternative to any sentence imposed under subsection (1) or (2), a court may order the  
20 convicted person to submit to tests for the presence of alcohol or drugs in the person's body during the duration  
21 of the alternative sentence. The tests must be administered by a law enforcement officer employed by the agency  
22 that made the arrest for the offense for which the person is sentenced. The tests must be administered on a  
23 schedule established by the court. The court may alter the testing schedule as is, in the discretion of the court,  
24 considered appropriate based on the test results. The law enforcement agency shall, as soon as reasonably  
25 possible, report all test results to the sentencing court. The person shall pay for the testing unless the court  
26 determines the person is unable to pay."

27 - END -